

ESTTA Tracking number: **ESTTA619355**

Filing date: **08/04/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92059444
Party	Defendant Pulse Creations, Inc.
Correspondence Address	PULSE CREATIONS INC 15A MAPLE DRIVE PORT WASHINGTON, NY 11050 UNITED STATES
Submission	Answer
Filer's Name	Christopher J. Bischoff
Filer's e-mail	chris@trademarksearch.com
Signature	/Christopher J. Bischoff/
Date	08/04/2014
Attachments	Petition for Cancellation - No. 92059444 - ANSWER.pdf(1369250 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Trademark Registration No.: 4232113

For the Mark: PINKY

Date of Registration: October 30, 2012

Vesture Group, Inc.,

Petitioner,

v.

Pulse Creations, Inc.,

Registrant.

Cancellation No.: 92059444

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION

Registrant, Pulse Creations, Inc. ("Registrant") by and through its undersigned counsel, hereby answers the Petition for Cancellation filed in the above captioned matter as follows:

1. Petitioner is the owner of U.S. Trademark Application Ser. No. 85919298 for PINKY LOS ANGELES, filed on April 30, 2013 covering "apparel namely tank tops, cotton woven shirts, knit shirts, polo shirts, t-shirts, sweat shirts, crew neck shirt, sweatshirts, cotton jackets, leather jackets, denim jackets, outer jackets, hats, caps, visors, hoods, head bands, sweat bands, kerchiefs, scarves, bandannas, neckerchiefs, gloves, socks, shorts, pants and vests, men's, women's and children's underwear namely briefs, boxers, bikini underwear, one piece and two piece garments, nightgowns, nightshirts, skirts, dresses, overalls, short pants, capri pants, blouses and sweaters," in Class 25 (the "Application"). See Exhibit A, attached hereto.

ANSWER: Registrant admits pending Application Serial No. 85/919,298 for the mark PINKY LOS ANGELES lists Petitioner as the Applicant. Registrant admits U.S. Trademark Application Serial No. 85/919,298 currently contains the following specification of goods: “apparel namely tank tops, cotton woven shirts, knit shirts, polo shirts, t-shirts, sweat shirts, crew neck shirt, sweatshirts, cotton jackets, leather jackets, denim jackets, outer jackets, hats, caps, visors, hoods, head bands, sweat bands, kerchiefs, scarves, bandannas, neckerchiefs, gloves, socks, shorts, pants and vests, men's, women's and children's underwear namely briefs, boxers, bikini underwear, one piece and two piece garments, nightgowns, nightshirts, skirts, dresses, overalls, short pants, capri pants, blouses and sweaters,” in class 25. Registrant is without sufficient knowledge or information upon which to form a belief as to the truth of the remainder of the allegations in paragraph 1 of the Petition for Cancellation, and therefore denies them.

2. Petitioner is being harmed by the Registration because the PTO Examining Attorney has refused the Application for registration on grounds that the Application is likely to be confused with the prior pending Registration. See Exhibit B, attached hereto.

ANSWER: Registrant admits the PTO Examining Attorney refused the Application for registration on grounds that the Application is likely to be confused with the prior Registration, but denies Petitioner is being harmed by the Registration. Registrant is without sufficient knowledge or information upon which to form a belief as to the truth of the remainder of the allegations in paragraph 2 of the Petition for Cancellation, and therefore denies them.

3. Upon information and belief, Respondent is not currently using the PINKY mark as a trademark in connection with "Blouses, Shirts, Pants, Shorts, Jackets, Dresses, Jumpsuits, Rompers, Loungewear, and Sleepwear excluding baby, juvenile and toddler clothing and accessories," in Class 25, as identified in the Registration. Notably, the phone number listed for Respondent is disconnected. See Exhibit C, attached hereto. Nor does Respondent appear to have a website. Id. Similarly, no reference to Respondent's mark PINKY can be found anywhere on the Internet. See Exhibit D, attached hereto.

ANSWER: Registrant denies it is not currently using the PINKY mark as a trademark in connection with goods in Class 25 identified in the Registration. Registrant admits the phone number listed on Exhibit C is disconnected. Registrant admits it does not have a website. Registrant denies that no reference to Registrant's mark PINKY can be found anywhere on the Internet. Registrant is without sufficient knowledge or information upon which to form a belief as to the truth of the remainder of the allegations in paragraph 3 of the Petition for Cancellation, and therefore denies them.

4. Petitioner is damaged and will continue to be damaged because Respondent's continued registration of the PINKY mark stands as a bar to Petitioner's ability to federally register and protect its PINKY LOS ANGELES mark.

ANSWER: Registrant admits that its Registration for PINKY stands as a bar to Petitioner's ability to federally register PINKY LOS ANGELES, and Registrant denies the remaining allegations in paragraph 4 of the Petition for Cancellation.

AFFIRMATIVE DEFENSES

In addition to the foregoing, Registrant pleads the following Affirmative Defenses:

5. Registrant has and continues to use the PINKY trademark in connection with the promotion and sale of clothing. Since at least as early as 1981 Registrant has been selling its PINKY brand clothing.

6. The Petition for Cancellation fails to state a claim upon which relief can be granted.

7. Petitioner has no standing to bring and/ or maintain the present cancellation action.

8. Petitioner cannot be damaged by the continued use of the PINKY trademark which is the subject of Registrant's Registration No. 4,232,113.

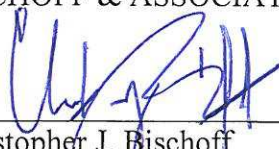
9. Petitioner is mistaken regarding its allegations Registrant is not currently using the PINKY mark in connection with the sale of clothing.

10. Petitioner is estopped under the doctrine of laches, acquiescence and/or unclean hands from bringing and/or maintaining its cancellation claims.

WHEREFORE, Registrant prays that this Petition for Cancellation of Registration No. 4232113 be dismissed with prejudice.

Respectfully submitted,

BISCHOFF & ASSOCIATES, LTD.

By: 
Christopher J. Bischoff
Raymond I. Geraldson III
Benjamin D. Rotman
1650 Payne Street
Evanston, IL 60201
(847) 491-9800
(847) 491-9801 (fax)

Dated: August 4, 2014

Attorneys for Registrant, Pulse
Creations, Inc.

CERTIFICATE OF SERVICE

I, Christopher J. Bischoff, hereby certify that a copy of the foregoing **REGISTRANT'S ANSWER TO PETITION FOR CANCELLATION** was served upon Petitioner's counsel, Wesley W. Lew, from Robins, Kaplan, Miller & Ciresli LLP, 2049 CENTURY PARK EAST, SUITE 3400, Los Angeles, CA 90067 via first class mail on this 4th day of August 2014.



Christopher J. Bischoff